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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

## No. 449

E. W. CLARK, AS RECEIVER,
PETITIONER,

*vs.*

HARRY O. WILLIARD, W. W. WHEATON, AND C. W. HAY,
AS TRUSTEES OF GORDON CAMPBELL-KEVIN SYNDICATE, A COMMON LAW TRUST, AND GORDON CAMPBELL-KEVIN SYNDICATE, A COMMON LAW TRUST, RESPONDENTS.

## SUPPLEMENTAL BRIEF OF PETITIONER

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## SUBJECT INDEX


| | | Page |
|---|---|---|
| Nature of the Cause | | 1 |
| Opinion of State Court | | 1 |
| Jurisdiction | | 2 |
| Statement of Case | | 2 |
| Error Relied Upon | | 7 |
| Summary of Facts and Argument | | 8 |
| Brief Points | | 11-15 |
| Argument: | | |
| Point I. | Statutes are part of charter | 15 |
| Point II. | Corporation finally dissolved | 17 |
| Point III. | Foreign state cannot keep corporation alive | 18 |
| Point IV. | Dissolution abates pending actions | 22 |
| Point V. | Full faith and credit due Iowa statutes and decrees | 25 |
| Point VI. | Decrees effected present dissolution | 27 |
| Point VII. | Petitioner's title statutory, not in invitum by decree | 30 |
| Point VIII. | Statute vested title in petitioner even though it did not contain express words of transfer | 33 |
| Point IX. | Unnecessary to plead that time for appeal from Iowa decree had expired | 35 |
| Point X. | Iowa court acquired jurisdiction to dissolve Federal Surety Company | 37 |
| Point XI. | Questions for review were properly preserved | 38 |
| | Petitioner set up his constitutional rights | 38 |
| | Effect of Iowa statutes and decrees pleaded | 40 |
| | Entry of Iowa decrees pleaded | 40 |
| Point XII. | Liquidator takes exclusive title, in trust; creditors cannot interfere with this title | 41 |
| Conclusion | | 42 |
| Appendix | | 46 |

## CASES CITED


| | Page |
|---|---|
| Bernheimer v. Converse, 206 U. S. 516, 51 L. Ed. 1164 | 13, 34 |
| Birney v. Birney, 111 N. J. Eq. 37, 161 Atl. 50 | 14, 36 |
| Booth v. Clark, 17 How. 322 | 34 |
| Bouree v. Trust Francais etc. Co., 14 Del. Ch. 332, 127 Atl. 56 | 15, 38 |
| Bullock v. Oliver, 155 Ga. 151, 116 S. E. 293 | 14, 35 |
| Cogliano v. Ferguson, 245 Mass. 364, 139 N. E. 527 | 12, 15, 26, 42 |
| Combes v. Milwaukee & M. R. Co., 89 Wis. 297, 62 N. W. 89, 27 L. R. A. 369 | 12, 23 |
| Converse v. Hamilton, 224 U. S. 243, 56 L. Ed. 749 | 13, 14, 26, 34 |
| Converse v. Mears, 162 Fed. 767 | 14, 34 |
| Coolot Co. v. L. Kahner & Co., 140 Fed. 836 (C. C. A. 9) | 14, 35 |
| Dow v. Blake, 148 Ill. 76, 35 N. E. 761 | 14, 36 |
| First National Bank of Selma v. Colby, 21 Wall. 609, 22 L. Ed. 687 | 12, 22 |
| Fitts v. National Life Assn. of Hartford, 130 Ala. 413, 30 S. 374 | 11, 20 |
| Fredericks v. Clark, 3 Mont. 258 | 14, 37 |
| Gulledge Bros. L. Co. v. Wenatchee Land Co., 115 Minn. 488, 132 N. W. 992 | 12, 21 |
| Hancock National Bank v. Farnum, 176 U. S. 640, 44 L. Ed. 619 | 13, 27 |
| Howarth v. Lombard, 175 Mass. 570, 49 L. R. A. 301, 56 N. E. 888 | 14, 34 |
| Kinsler v. Casualty Co. of America, 103 Neb. 382, 172 N. W. 33 | 11, 13, 16, 31 |
| MacRae v. Kansas Piano Co., 69 Kan. 457, 77 Pac. 94 | 12, 22 |
| Marion Phosphate Co. v. Perry, 74 Fed. 425 (C. C. A. 5) | 11, 12, 19, 23 |
| Martyne v. Am. Union F. Ins. Co., 216 N. Y. 183, 110 N. E. 502 | 13, 32 |
| Morgan v. New York Nat. Bldg. & Loan Assn., 73 Conn. 151, 46 Atl. 877 | 12, 21, 26 |
| Mumma v. Potomac Co., 8 Pet. 284, 8 L. Ed. 945 | 12, 15, 23, 42 |
| National Surety Co. v. Cobb, 66 Fed. (2d) 323 (C. C. A. 5) | 11, 19 |
| Oklahoma Natural Gas Co. v. Oklahoma, 273 U. S. 257, 71 L. Ed. 634 | 11, 12, 20, 24 |
| Parker v. Stoughton Mills Co., 91 Wis. 174, 64 N. W. 751 | 14, 34 |
| Pendleton v. Russell, 144 U. S. 640, 36 L. Ed. 574 | 12, 24 |
| Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565 | 38 |
| Relfe v. Rundle, 103 U. S. 222, 26 L. Ed. 337 | 11, 13, 15, 16, 31, 42 |
| Remington v. Samana Bay Co., 140 Mass. 494, 5 N. E. 292 | 11, 19 |
| Riddell v. Rochester German Ins. Co., 35 R. I. 45, 85 Atl. 273 | 12, 20 |
| Roche v. McDonald, 275 U. S. 449, 72 L. Ed. 365 | 12, 25, 41 |
| Rutherford v. Greene's Heirs, 15 U. S. 196, 4 L. Ed. 218 | 13, 30 |
| State of Iowa v. Fidelity Loan & Trust Co., 113 Ia. 439, 85 N. W. 638 | 11, 18 |
| Taylor v. Shew, 39 Cal. 536 | 14, 36 |
| U. S. v. Percheman, 7 Pet. 51, 8 L. Ed. 604 | 13, 29 |
| U. S. v. Wiggins, 14 Pet. 334, 10 L. Ed. 481 | 13, 29 |
| Venable v. Granite Co., 135 Ga. 508, 69 S. E. 822, 32 L. R. A. ns 446 | 12, 24 |
| Viterbo v. Friedlander, 120 U. S. 707, 30 L. Ed. 776 | 13, 29 |

## STATUTES CITED

Sec. 8402, Iowa Codes 1927 and 1931, being Sec. 1640, Iowa Code 1897 ..... 11, 17, 47
Sec. 8964, Iowa Codes 1927 and 1931, being Sec. 1731, Iowa Code 1897 ..... 11, 15, 17, 28, 37, 47
Sec. 8613-c-1, Iowa Code 1931, being Chap. 233, Acts 43d General Assembly of Iowa ..... 11, 17, 48
Sec. 1, Art. IV, Constitution of the United States ..... 6, 12, 25, 39
Sec. 237, Judicial Code ..... 46

## TEXTBOOKS CITED

1 Perry on Trusts (6th Ed.), Secs. 313, 314, 315 ..... 13, 34, 35
1 Thompson on Corp. (3d Ed.), Sec. 40 ..... 12, 21
57 C. J. 545, 546, Sec. 2 ..... 13, 29
10 R. C. L., p. 605, Sec. 4 ..... 14, 33

# SUPREME COURT OF THE UNITED STATES

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## SUPPLEMENTAL BRIEF OF PETITIONER

### NATURE OF THE CAUSE

This Court is asked to review a decision of the Montana Supreme Court reversing an order denying respondents the right to levy an execution under a judgment against an Iowa corporation which had been previously dissolved in a statutory liquidation proceeding in the state of its domicile.

This proceeding among other things presents the question what faith and credit the Montana courts must give to the Iowa statutes and to judicial proceedings in that state for the dissolution of the Iowa corporation against which the judgment was rendered.

### OPINION OF THE STATE COURT

The opinion of the Montana Supreme Court has not been published in the official Montana Reports. It appears under the title of Mieyr v. Federal Surety Company, 23 Pac. (2d) 959, and at Pages 69 to 87 inclusive of the Record herein.

## JURISDICTION

The grounds (failure to give full faith and credit to Iowa acts and decrees) on which the jurisdiction of this Court is invoked are set out at Page 9 of the brief in support of the petition for certiorari and in the petition, along with the other pertinent data with respect to jurisdiction.

Respondents' brief in resistance to the petition for certiorari treats at length with the subject of jurisdiction. For a concise answer to those contentions see statement of facts herein and brief point XI herein.

## STATEMENT OF THE CASE

Federal Surety Company prior to September 25, 1931, was an Iowa insurance corporation (R. 22). The District Court, Scott County, Iowa, in a statutory proceeding by the Iowa Attorney General entered orders and decrees September 25, 1931, and December 22, 1931, dissolving said corporation and directing its liquidation by the Iowa Insurance Commissioner. See bill of complaint, Par. 6 (R. 5), Par. 10 (R. 6), admitted by petitioner's answer and cross-complaint (R. 15), to which are attached as exhibits copies of the two Iowa decrees (R. 21 and R. 26), stipulated to be true copies (R. 65). Petitioner qualified as receiver (R. 31). The authority for the decrees and the appointment and for the vesting of your petitioner with title to property of said corporation appears in certain sections of the Iowa Code, referred to and quoted in Appendix hereto and in the decree of the Iowa Court December 22, 1931 (R. 27).

Section 8402, Iowa Code, 1931, formerly Section 1640, Iowa Code, 1897, (Appendix hereto, and R. 27), provides that courts of equity shall have full power to dissolve a corporation and appoint a receiver therefor.

Section 8764, Iowa Code, 1931, formerly Section 1731, Iowa Code, 1897, (Appendix hereto, and R. 27-28), provides for an examination of an Iowa insurance corporation by the Insurance Commissioner and directs that if certain facts, including insufficiency of assets, are found by the Commissioner, that he shall communicate those facts to the Attorney General of Iowa, who shall commence a proceeding for the dissolution of the corporation and the winding up of its affairs. The court

is directed, in the event of certain findings, to decree a dissolution of the corporation and a distribution of its effects and to appoint a receiver.

Section 8613-c-1, Iowa Code, 1931, (Appendix hereto, and R. 28), directs that the Iowa Insurance Commissioner shall be the receiver for winding up an insurance company.

Approximately six months after the entry of the decree of dissolution in Iowa, an equity action was commenced in the District Court, Cascade County, Montana. One Mieyr, a creditor, was plaintiff. Federal Surety Company and the Iowa Insurance Commissioner were named as defendants. The aforesaid Iowa statutes and their effect in Iowa were pleaded in the bill of complaint. The Cascade County court in that action appointed a receiver for the Montana assets of the surety company (R. 8-10).

Thereafter, and in May, 1932, a money judgment was rendered in favor of respondents and against the surety company in a law action in Fergus County, Montana (R. 61). After they obtained their judgment respondents appeared in the equity action in Cascade County, Montana, and there asked and, with certain limitations, obtained leave of that court to levy execution under their judgment (R. 12-14). Thereafter petitioner appeared in the Cascade County equity action and filed his answer and cross-petition admitting certain allegations of Mieyr's complaint (R. 15), and asking for the entry of an order making the proceeding ancillary to and in aid of the liquidation proceeding in Iowa. The complainant, Mieyr, admitted the allegations of the answer and cross-petition (R. 34). The Cascade County court then entered an order (1) confirming the appointment of the receiver of the Montana assets, (2) providing for local proof of claims, (3) outlining procedure for certifying claims and transmitting assets to Iowa, and (4) revoking the previous order permitting the levy under respondents' Fergus County judgment (R. 34-39).

Thereafter respondents moved to set aside the portions of the Cascade County order referred to (R. 39). Petitioner filed a resistance to their motion upon the ground that to sustain that motion would deny full faith and credit to the Iowa statutes and to judicial proceedings in Iowa dissolving the surety company, appointing your petitioner receiver, and vesting him with title to all the property of the surety company (R. 64).

The Cascade County court upheld petitioner's contentions and overruled respondents' motion (R. 66). Respondents appealed (R. 68, 69). The Montana Supreme Court reversed the Cascade County court and in effect held that respondents' judgment was valid notwithstanding the dissolution of the surety company in the state of domicile, and in effect held that the title to the surety company assets had not passed to the Iowa Insurance Commissioner in such a manner as to prevent levy thereon in Montana. See opinion (R. 69 to 87).

Complete understanding of the points argued requires attention to the details of the proceedings.

The complaint in the Cascade County equity action quoted at length Section 8402, 8964 and 8613-c-1 of the Iowa Code (R. 4, 5), recited the entry of the Iowa decree, and in Paragraph 6 alleged:

> "That on or about the 25th day of September, 1931, in the District Court of the State of Iowa, in and for the County of Scott, in Equity Cause No. 28238, entitled 'State of Iowa, ex rel, John Fletcher, Attorney General, vs. Federal Surety Company, of Davenport, Iowa,' judgment was *duly given and made*" (our italics) "in said cause, dissolving said corporation and appointing one E. W. Clark Receiver and/or Liquidating Officer of said corporation, to take title to all property of the dissolved corporation for the purpose of liquidating its affairs and distributing its assets as by law provided."

Paragraph 10 of the complaint alleges:

> "That by the decree of the Court of Iowa above mentioned, said Federal Surety Company of Davenport, Iowa, has ceased to exist as a corporate entity, and its successor, the said E. W. Clark, Receiver of said Federal Surety Company of Davenport, Iowa, is beyond the jurisdiction of this Court."

Petitioner's answer and cross-complaint admits the above quoted allegations (R. 16), thereby adopting the allegations as to effect in Iowa of the Iowa decrees as well as the allegation that the Iowa decrees were *duly given and made* as required by the Montana statute. The exhibits thereto included the

Iowa decree of December 22, 1931 (admitted by Stipulation, R. 65), by which the Iowa trial court among other things determined:

> "That by virtue of the statutes hereinbefore referred to, as construed by the Court of last resort in the State of Iowa, and by virtue of the proceedings in this cause, the said corporation, Federal Surety Company, ceased to exist upon the entry of the Order and Decree herein at 4:30 P. M., Central Standard Time, September 25, 1931, and that thereupon all its agencies ended, its employees, including attorneys, were discharged, and it was put, *without exception or notice of appeal*" (our italics) "beyond all further corporate activity, its existence was put to an end for all purposes whatsoever, so that it can neither make nor take contracts, nor sue or be sued, and so that all debts to or from it became extinguished and all actions by or against it abated, and so that as after death of a natural person, it can have no interest in the property theretofore by it controlled." (R. 29)

Not only was the effect of the judgments and decrees in Iowa pleaded in the Montana trial court, but that court in fact determined and decided that question by the order entered August 25, 1932 (R. 34), in which it confirmed the appointment of the Montana receiver and made the receivership ancillary to the Iowa proceeding and in which it further found and determined that the Iowa court had dissolved the surety company and appointed the Iowa commissioner as receiver and in which the Montana trial court stated among other things:

> "That thereupon the corporate existence of Federal Surety Company terminated and title to all property theretofore owned by it passed to the Commissioner of the Department of Insurance of the State of Iowa in his capacity as Receiver and/or liquidating officer as aforesaid." (R. 35)

That same order revoked, annulled, and set aside the permission granted to respondents, permitting them to levy execution under the money judgment (R. 38, Par. 12).

In their motion respondents moved to strike out of the decree the following (among other things): "That thereupon the corporate existence of Federal Surety Company terminated, and

title to all property heretofore owned by it passed to the Commissioner of the Department of Insurance of the State of Iowa in his capacity as Receiver and/or liquidating officer as aforesaid." (R. 40, 41)

Thereby recognizing that the legal effect of the decree in Iowa had been pleaded and decided and pleading thereto.

Petitioner based his objections to the motion to vacate the order and decree "upon the grounds and for the reason that if said Motion is sustained it would, in violation of Section 1, Article IV of the Constitution of the United States, deny full faith and credit to the public acts, records and judicial proceedings of the State of Iowa, *made and entered*" (our italics) "in the District Court of the State of Iowa, in and for Scott County, a court of general jurisdiction, in the case entitled State of Iowa, ex rel. John Fletcher, Plaintiff, vs. Federal Surety Company of Davenport, Iowa, Defendant, being cause No. 28238 in equity, in which cause said Federal Surety Company by decrees of said court, *duly made and entered*" (our italics) "on September 25, 1931, and December 22, 1931, was dissolved and E. W. Clark, Commissioner of Insurance of the State of Iowa, was then duly appointed statutory receiver and/or liquidating officer of said Federal Surety Company, and vesting in him title to all property of said Federal Surety Company wherever situated, all of which is more fully shown in the duly exemplified copies of said decrees attached to and made a part of the answer and cross-petition of E. W. Clark as Receiver and/or Liquidating Officer of the Federal Surety Company of Davenport, Iowa, filed in this action pending in the District Court of Cascade County, Montana, on the 25th day of August, 1932, to which decrees reference is hereby made." (R. 64)

It was then stipulated that the statutory provisions of the State of Iowa set forth in the complaint and in the cross-complaint are therein correctly set forth and that copies of the judgments and orders attached to the cross-complaint were true and correct copies of the original judgment and orders given and made in the Iowa court (R. 65).

The Cascade County court overruled respondents' motion (R. 66). Respondents appealed (R. 68). The Montana Supreme Court reversed the Cascade County trial court (R. 69-87). In its opinion reversing the trial court the Montana court

considered two propositions: (1) Whether respondents' law action in Fergus County, Montana, had abated upon the dissolution of the defendant surety company in Iowa (R. 75); and (2) whether the title to the assets had passed to the Iowa Commissioner upon entry of the Iowa decree (R. 79). The Montana Supreme Court opinion conceded for the purposes of the opinion that the Iowa decree resulted in a present dissolution of the surety company and then proceeded to consider the questions whether respondents' law action abated and whether the title passed to the Iowa Commissioner.

The opinion then holds that respondents' law action did not abate upon the dissolution in Iowa (R. 77, last par.).

The opinion then proceeds to consider the question whether title passed to the Iowa Insurance Commissioner and holds that even though the appointment in Iowa operated to transfer the property, such involuntary assignment in aid of a statutory judicial proceeding will not be recognized outside of the jurisdiction of the appointment, where the rights of domestic creditors are involved (R. 79, last par.).

The opinion concludes (R. 80) with the statement:

> "The property of the Federal Surety Company within the state of Montana at the time of the levy of the execution by Williard et al., not being in possession of the Iowa receiver, was subject to levy, and the levy made under the execution in May, 1932, is good and valid."

Petitioner then asked this Court to review the action of the Montana Supreme Court and assigned the following errors (Petition For Certiorari and Brief, p. 10), which will be fully argued herein:

"ERROR RELIED UPON.

"The Supreme Court of Montana erred in failing and refusing to regard the dissolution of Federal Surety Company in Iowa as effective in Montana and in failing and refusing to regard your petitioner as successor to said company and the holder of title to all of the property of said company, thereby denying full faith and credit to the Iowa statutes and judicial proceedings in that State."

## SUMMARY OF FACTS AND ARGUMENT

Pursuant to an Iowa statute action was commenced by the Attorney General against the Iowa corporation, and decrees were entered dissolving the corporation and appointing the Iowa Insurance Commissioner as Receiver.

Thereafter respondents obtained a money judgment in Montana against *the corporation* and levied execution in Montana on property owned by the corporation at the time of dissolution.

The record raises the questions that the full faith and credit clause of the Federal Constitution required the Montana court to give effect to the Iowa statutes and decrees and to determine that the corporate existence had terminated; that respondents' law action had abated; that the title to the assets had passed to the Iowa Insurance Commissioner as trustee for creditors; and that the entry of the money judgment against the corporation and the levy attempted thereunder were ineffectual as against the Iowa Commissioner as such trustee.

The Montana court held that notwithstanding dissolution in Iowa the corporate existence was continued in Montana; that respondents' law action did not abate; that title to the assets had not passed to the Iowa Commissioner so as to prevent levy; and that the judgment against *the corporation* and the levy thereunder were effectual as against the Iowa Commissioner.

The Iowa statute was part of the corporate charter. The statute limited the corporate life and specified the distribution of its effects upon dissolution. Admission to Montana as a foreign corporation did not give the surety company added vitality. It was there admitted subject to its charter provisions, which were recognized by all who dealt with it, including the State of Montana.

The dissolution was final. Corporate existence was not continued for any purpose. Actions against the corporation abated. Judgment could not thereafter be rendered against it any more effectually than against a dead man. Montana could not continue the existence of the corporation any more effectually than it could continue the life of a human being deceased. This result is not procedural or controlled by the law of Montana, but concerns the fundamental law of the corporation enacted

by the state which brought the corporation into being. Respondents' law action having abated could not proceed unless possibly by revivor, which was not resorted to.

The Iowa statute directed distribution of assets to creditors and for that purpose designated the Iowa Insurance Commissioner as Receiver. As such he became trustee of an express trust and took, at least by implication, title sufficient to carry out the trust.

By holding that the corporate existence continued and that title did not pass, the Montana court denied full faith and credit to the Iowa acts and decrees. That denial was not avoided by relying on a Montana statute. Denial by virtue of a Montana statute was denial nevertheless and offends the full faith and credit clause as would denial on any other ground. The Iowa statute, as put into effect by the Iowa decrees, must be given effect even though repugnant to a Montana statute.

Title to the assets having passed, and respondents' law action having abated, the judgment rendered against *the corporation* and the levy attempted thereunder were ineffectual as against the Iowa Commissioner as trustee for all creditors.

The dissolution and transfer of title are said by the Montana court to be in invitum and therefore need not be recognized. The decree in Iowa merely put the statutory charter provision into effect. It is that statutory charter provision which must be given full faith and credit in Montana and not alone the decree.

Respondents contend the Iowa court decreed the corporation *shall* be dissolved and therefore did not effect present dissolution. The word "shall" must be read with the context of the Iowa decree, which is that the corporation shall be dissolved *in accordance with the Iowa statute* which specified present dissolution. The present tense should therefore be accorded to the word "shall." In any event, that question was settled by supplemental decree entered before respondents' judgment.

Respondents contend that the Iowa court did not have jurisdiction of the corporation when it entered its decree. The Iowa court did have jurisdiction. Its jurisdiction was not acquired pursuant to ordinary procedural statutes but according to and

in exact compliance with a statutory provision of the corporate charter.

Respondents contend that the Iowa statute did not by express words vest title in the Iowa Commissioner. The statute nevertheless imposed upon him a trust for benefit of creditors, and under the law of trusts he acquired by implication sufficient title to carry out that trust. The implication is necessary, otherwise under common law the assets reverted or escheated contrary to the intent of the statute.

Respondents contend that the entry of the Iowa decrees and their effect in Iowa were not pleaded. See foregoing Statement of Facts, Brief Point XI, and argument thereunder. The entry and effect of the Iowa decrees were pleaded several times and were adjudicated by the very decree which respondents attack by motion.

Petitioner's constitutional assertions were duly and adequately set up in the objections to respondents' motion (R. 64).

The purpose of the Iowa statute is clear, to-wit, present dissolution and ratable distribution irrespective of geographical location of assets and irrespective of residence. That purpose should be carried out, and all reasonable implications essential to that end should be indulged in.

To uphold petitioner's contentions it is unnecessary to indulge in any implications unless possibly with respect to interpreting the word "shall" and accompanying context as used in the Iowa decree and with respect to implying transfer of title sufficient to carry out the trust imposed on the Iowa Insurance Commissioner. Neither is strained. Both are clearly called for by the record.

With those implications made, it becomes clear that the surety company was finally dissolved; that title passed to the Iowa Commissioner for the benefit of all creditors; that the State of Montana is powerless to alter the effects of those charter provisions; that respondents' judgment and levy were ineffectual against the Iowa Commissioner as such trustee; and that the Montana decision, having failed to give such effect to the Iowa decrees and statutory charter provisions, should be reversed.

## POINTS OF LAW RELIED UPON

### I.

Statutes of the state creating a corporation, providing for its dissolution and liquidation, are part of its charter, which is the law of the corporate existence.

Relfe v. Rundle, 103 U. S. 222, 26 L. Ed. 337;

Kinsler v. Casualty Co. of America, 103 Neb. 382, 172 N. W. 33.

### II.

The decrees of the Iowa court finally dissolved Federal Surety Company. Thereafter it had no existence.

Sec. 8402, Iowa Code 1931, being Sec. 1640, Iowa Code 1897;

Sec. 8964, Iowa Code 1931, being Sec. 1731, Iowa Code 1897;

Sec. 8613-c-1, Iowa Code 1931, being Chap. 233, Acts 43d General Assembly of Iowa;

State of Iowa v. Fidelity Loan & Trust Co., 113 Ia. 439, 85 N. W. 638.

### III.

No state save that creating a corporation has power to keep it alive or to modify its charter.

National Surety Co. vs. Cobb, 66 Fed. (2d) 323 (C. C. A. 5);

Remington v. Samana Bay Co., 140 Mass. 494, 5 N. E. 292;

Marion Phosphate Co. v. Perry, 74 Fed. 425;

Fitts v. National Life Assn. of Hartford, 130 Ala. 413, 30 S. 374;

Oklahoma Natural Gas Co. v. Oklahoma, 273 U. S. 257, 71 L. Ed. 634;

Riddell v. Rochester German Ins. Co., 35 R. I. 45; 85 Atl. 273;

Gulledge Bros. L. Co. v. Wenatchee Land Co., 115 Minn. 488, 132 N. W. 992;

1 Thompson on Corp. (3d Ed.), Sec. 40;

Morgan v. New York Nat. Bldg. & Loan Assn., 73 Conn. 151, 46 Atl. 877.

IV.

No personal judgment can be rendered against a dissolved corporation. Pending actions against it abate.

MacRae v. Kansas Piano Co., 69 Kan. 457, 77 Pac. 94;

First National Bank of Selma v. Colby, 21 Wall. 609, 22 L. Ed. 687;

Combes v. Milwaukee & M. R. Co., 89 Wis. 297, 62 N. W. 89, 27 L. R. A. 369;

Mumma v. Potomac Co., 8 Pet. 284, 8 L. Ed. 945;

Marion Phosphate Co. v. Perry, 74 Fed. 425;

Venable v. Granite Co., 135 Ga. 508, 69 S. E. 822; 32 L. R. A. ns 446;

Oklahoma Natural Gas Co. v. State of Oklahoma, 273 U. S. 257, 71 L. Ed. 634;

Pendleton v. Russell, 144 U. S. 640, 36 L. Ed. 574.

V.

The Iowa statutes and decrees finally dissolving the Iowa corporation and vesting title in the liquidator are entitled to full faith and credit in Montana under Section 1, Article IV, of the Constitution of the United States.

Roche v. McDonald, 275 U. S. 449, 72 L. Ed. 365;

Cogliano v. Ferguson, 245 Mass. 364, 139 N. E. 527;

Morgan v. N. Y. Nat. Bldg. & Loan Assn., 73 Conn. 151, 46 Atl. 877;

Converse v. Hamilton, 224 U. S. 243, 56 L. Ed. 749;

Hancock National Bank v. Farnum, 176 U. S. 640; 44 L. Ed. 619.

VI.

The Iowa decree of September 25, 1931, effected a present dissolution of Federal Surety Company. If not, the decree of December 22, 1931, certainly did so.

57 C. J. 545, Sec. 2;

U. S. v. Percheman, 7 Pet. 51, 8 L. Ed. 604, 618;

Viterbo v. Friedlander, 120 U. S. 707, 30 L. Ed. 766;

U. S. v. Wiggins, 14 Pet. 334, 349; 10 L. Ed. 481;

Rutherford v. Greene's Heirs, 15 U. S. 196, 4 L. Ed. 218.

VII.

Petitioner, the Insurance Commissioner of Iowa, took and holds title to the corporate property by virtue of the Iowa statutes which are part of the corporate charter, and not in invitum by the court's decree. The decree simply put the statutes into operation.

Relfe v. Rundle, 103 U. S. 222, 26 L. Ed. 337;

Kinsler v. Casualty Co. of America, 103 Neb. 382, 172 N. W. 33;

Martyne v. Am. Union F. Ins. Co., 216 N. Y. 183, 110 N. E. 502.

VIII.

Under the Iowa statutes title to the corporate property is vested in the Iowa Commissioner of Insurance, by operation of law, though there are no express words of transfer in the statutes, otherwise it must escheat to the State.

1 Perry on Trusts (6th Ed.), Secs. 313, 314, 315;

Bernheimer v. Converse, 206 U. S. 516, 525, 534; 51 L. Ed. 1164;

Converse v. Hamilton, 224 U. S. 245, 255, 257; 56 L. Ed. 749;

Converse v. Mears, 162 Fed. 767, 769;

Parker v. Stoughton Mills Co., 91 Wis. 174, 64 N. W. 751;

Howarth v. Lombard, 175 Mass. 570, 49 L. R. A. 301, 56 N. E. 888;

Bullock v. Oliver, 155 Ga. 151, 116 S. E. 293;

10 R. C. L., p. 605, Sec. 4.

IX.

It was not necessary for petitioner to plead that time for appeal from the Iowa decree had expired.

(a) The Iowa decree of December 22, 1931, finds that Federal Surety Company was by the decree of September 25, 1931, "put, without exception or notice of appeal, beyond all further corporate activity" (R. 29).

(b) In pleading a foreign judgment it is not necessary to allege that there is no appeal pending or that the time for appeal has expired. These are matters of defense according to all the authorities.

A. Coolot Co. v. Kahner & Co., 140 Fed. 836;

Dow v. Blake, 148 Ill. 76, 35 N. E. 761;

Birney v. Birney, 111 N. J. Eq. 37, 161 Atl. 50;

Taylor v. Shew, 39 Cal. 536;

Fredericks v. Clark, 3 Mont. 258.

X.

The order to show cause why "its business should not be forthwith dissolved," served on Federal Surety Company, gave the Iowa court jurisdiction to enter a decree of dissolution because the Iowa statute, which was part of its charter, so provides.

Sec. 8964, Iowa Codes of 1927 and 1931, being Sec. 1731 Iowa Code 1897;

Bouree v. Trust Francais etc. Co., 14 Del. Ch. 332; 127 Atl. 56, 61.

XI.

The questions for review by this Court were properly preserved in the Montana courts.

(a) Petitioner set up the title, right, privilege, or immunity claimed by him under the Constitution.

(b) The effect of the decrees and statutes of Iowa was pleaded and proved.

(c) The entry of the orders and decrees in Iowa was properly pleaded.

XII.

The title which enables a liquidator to sue for property in another state necessarily precludes any other from suing for it. The charter provisions, in the form of statutes providing for dissolution and liquidation, are implied terms of every contract which the corporation makes with its creditors. This precludes the creditor from in any manner interfering with the liquidator's control of the corporate property wherever situated.

Relfe v. Rundle, 103 U. S. 222, 26 L. Ed. 337;

Cogliano v. Ferguson, 245 Mass. 364, 139 N. E. 527;

Mumma v. Potomac Co., 8 Pet. 284, 8 L. Ed. 945.

## ARGUMENT

### I.

**Statutes of the state creating a corporation, providing for its dissolution and liquidation, are part of its charter, which is the law of the corporate existence.**

The principle that statutes of the state of domicile are part of the corporate charter is at the very root of the rules governing this case. From it flow consequences that the Montana

Supreme Court entirely overlooked or refused to recognize, although they are pointed out in the dissenting opinion concurred in by two of the five Justices of that court.

In the leading case of *Relfe v. Rundle*, 103 U. S. 222, 26 L. Ed. 337, this Court said that the Missouri Insurance Superintendent, designated by statute to liquidate a dissolved insurance corporation, was not an officer of the court which dissolved the corporation but was a statutory trustee for creditors and stockholders. This Court held that the law which clothed the Missouri Insurance Superintendent with the trust was in legal effect part of the charter of the corporation. In so holding the Court used the following language:

> "Relfe is not an officer of the Missouri State Court, but the person designated by law to take the property of any dissolved life insurance corporation of that State, and hold and dispose of it in trust for the use and benefit of creditors, and other parties interested. The law which clothed him with this trust was, in legal effect, part of the charter of the corporation."
>
> "Every corporation necessarily carries its charter wherever it goes, *for that is the law of its existence.*" (our italics) "It may be restricted in the use of some of its powers while doing business away from its corporate home, but every person who deals with it everywhere is bound to take notice of the provisions which have been made in its charter for the management and control of its affairs both in life and after dissolution."

In *Kinsler v. Casualty Co. of America*, 103 Neb. 382; 172 N. W. 33, a New York corporation was permitted to do business in Nebraska and thereafter was dissolved in a New York statutory liquidation proceeding. Its property was attached in Nebraska. The New York Insurance Superintendent intervened. The Nebraska court dissolved the attachment. The court referred to the desirability of preventing removal of property from the state and referred to the proposition that Nebraska need not have admitted the New York corporation. The decision then squarely recognizes that the New York corporation once admitted brought with it all its charter provisions, including the New York statutes relative to liquidation. The

following language appears in the opinion:

> " * * * but foreign corporations came here with their charters limited, checked, and hemmed in by a foreign statute, the statute of their home state, and when this state admitted a corporation under these conditions and specific provisions, it is bound by it, and has entered into solemn contract to recognize the powers therein conveyed."

## II.

**The decrees of the Iowa court finally dissolved Federal Surety Company. Thereafter it had no existence.**

Sec. 8402, Iowa Code 1931, being Sec. 1640, Iowa Code 1897 (appendix hereto, and R. 27), provides:

> "Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the State of Iowa."

Sec. 8964, Iowa Code 1931, being Sec. 1731, Iowa Code 1897 (appendix hereto, and R. 27-28), provides for an examination of any insurance company doing business in the state; provides if certain facts are found:

> "he shall communicate the fact to the attorney general, who shall apply to the district court, or if in vacation to one of the judges thereof, for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company and a distribution of its effects, and appoint a receiver therefor."

Sec. 8613-c-1, Iowa Code 1931, being Chapter 233, Acts 43d General Assembly of Iowa (appendix hereto, and R. 28), provides:

"The commissioner of insurance henceforth shall be the receiver and/or liquidating officer for any insurance company, association or insurance carrier."

The court of last resort in the State of Iowa has held that the existence of a corporation dissolved by decree pursuant to statute terminates on entry of the decree; that the corporation does not continue in existence for any purpose. The court held that only corporations whose charters expire by limitation or the voluntary act of the stockholders continue their existence for the purpose of winding up their affairs. The court squarely holds that a statute continuing corporate existence for the purpose of winding up its affairs does not apply to dissolution by court decree pursuant to statute because there is ample provision through the appointment of a receiver or trustee for winding up the affairs of the corporation and for the protection of creditors and stockholders. The court held that the effect of the decree was to put an end to the corporate existence for all purposes whatsoever and to destroy every one of its faculties, so that thereafter it could neither make nor take contracts, nor sue nor be sued.

The Iowa Supreme Court so held in the case of *State of Iowa v. Fidelity Loan & Trust Co.*, 113 Iowa 439, 85 N. W. 638, wherein the court among other things says:

"It is only the corporations whose charters expire by limitation or the voluntary act of the stockholders which continue for the purpose of winding up their affairs."

We therefore start with the proposition that the dissolution of Federal Surety Company became final upon the entry of the decree September 25, 1931. It did not survive for any purpose.

## III.

**No state save that creating a corporation has power to keep it alive or to modify its charter.**

Federal Surety Company derived its existence from Iowa statutes. Its admission to another state gave it no new vitality. The sovereignty which creates a corporation has exclusive power over its existence.

Dissolution of a corporation in the state of domicile is to it as death to a human being. Thereafter, unless the corporate existence is continued by laws of the domicile, it has no existence for any purpose either within or beyond the state of domicile. At common law, for example, dissolution abated all litigation in which the corporation appeared either as plaintiff or defendant and that is still the law except as changed by statute of the creating state.

In *National Surety vs. Cobb*, 66 Fed. (2d) 323 (C. C. A. 5), the court says that the case:

> " * * * presents the seriously substantial point that when a corporation has been, pursuant to the statutes of the state of its incorporation, dissolved by a court of competent jurisdiction in that state, it is, *unless the statutes of that state continue its corporate life*" (our italics) "for the purposes of suit, civilly dead, and no action can be thereafter maintained against it anywhere."

The court in that decision held that judgment against a dissolved New York corporation was a nullity. Petition for writ of certiorari was denied November 13, 1933.

The Massachusetts Supreme Court in *Remington v. Samana Bay Co.*, 140 Mass. 494, 5 N. E. 292, held that a corporation formed by a foreign government and later dissolved by that foreign government could not be kept alive in the United States, and in so holding used the following language:

> "It is true that the existence of a corporation is a fiction, but the very meaning of that fiction is that the liability of its members shall be determined as if the fiction were the truth. That fiction or artificial creation is *wholly within the power of its creator*," (our italics) "and persons who deal with it must be taken to understand that it is so."

In *Marion Phosphate Co. v. Perry*, 74 Fed. 425, 428 (C. C. A. 5), it was contended that a Florida statute kept a dissolved Georgia corporation alive. The Circuit Court for the Fifth Circuit held that the dissolution in Georgia put an end to the corporate existence everywhere and that dissolution of the corporation could not be affected by the laws of Florida. The court used the following language:

"The Chatham Investment Company, incorporated under the laws of the State of Georgia, when dissolved according to those laws, became a dissolved corporation everywhere,—dead in Florida as well as Georgia."

In *Fitts v. National Life Assn. of Hartford*, 130 Ala. 413, 30 S. 374, the court held that an Alabama statute continuing corporate existence for five years after dissolution had no application to a foreign corporation and that for their existence in Alabama foreign corporations depended solely on the laws of the state of their creation. The court uses the following language:

"Our statute providing for the continued existence of dissolved corporations for five years for the purpose of prosecuting or defending suits, etc., has no application to foreign corporations. *For existence here they depend solely on the state of their creation.*" (our italics)

In *Oklahoma Natural Gas Co. v. Oklahoma*, 273 U. S. 257, 71 L. Ed. 634, Chief Justice Taft stated that dissolution of a corporation at common law abated all litigation and that in order that the corporate existence might continue even only for litigating purposes there must be some statutory authority in the state of domicile for the prolongation, and then continues:

"The matter is really not procedural or controlled by the rules of the court in which the litigation pends. *It concerns the fundamental law of the corporation enacted by the state which brought the corporation into being.*" (our italics)

In *Riddell v. Rochester German Ins. Co.*, 35 R. I. 45; 85 Atl. 273, 275, the Rhode Island court held that an action against a New York corporation, subsequently dissolved, had not abated, but based its holding entirely upon the proposition that the New York law continued the existence of the corporation. The court says:

"We agree with the contention of the defendant that Section 9, c. 213 of our General Laws, has no application to the present case. The right to maintain this action unabated

*does not, and cannot, come from any legislation in our own state,* but such right must be found in the charter of these insurance companies or in the laws of the state of New York." (our italics)

In *Gulledge Bros. Lbr. Co. v. Wenatchee Land Co.,* 115 Minn. 488, 132 N. W. 992, the Minnesota court, in dealing with a dissolved Washington corporation, held that the Minnesota statute continuing corporations for a definite period after dissolution had no application and that the existence of the corporation depended entirely on the law of Washington, which provided that upon dissolution a Washington corporation ceased to exist for any purpose. The court says:

"The situation and rights of all parties, stockholders and creditors, as respects the winding up of the affairs of the corporation, are governed by the laws of Washington, and not by the laws of this state."

In *1 Thompson on Corp. (3d Ed.),* Sec. 40, the statement is made that a corporation can only be created and exist by sanction of the legislature.

The proposition here contended for is succinctly stated by the Connecticut court in *Morgan v. New York Nat. Bldg. & Loan Assn.,* 73 Conn. 151, 46 Atl. 877, as follows:

"The capacity of suing and being sued is possessed by corporations only by law; by foreign corporations, only because of their existence by force of foreign law. If there is no such law, there is no such capacity. The state which grants a corporate franchise has exclusive and supreme power to withdraw it, whatever may be the effect of its so doing on property rights which may have been acquired under the laws of other governments."

Generally speaking, it is clear that an Iowa corporation can exist only by virtue of Iowa statutes. Can it be that the State of Iowa, creator of a corporation, can withdraw life from it only by consent of the remaining forty-seven states of the Union? This is the result if any other state can keep it alive after the State of Iowa has finally dissolved it.

## IV.

**No personal judgment can be rendered against a dissolved corporation. Pending actions against it abate.**

We are not considering the question whether a state may enact statutes of survival and revivor of suits against foreign corporations finally dissolved.

In this case the Montana courts have not proceeded by revivor against the successor or representative, but, refusing to recognize the dissolution of the Iowa corporation, have attempted to render judgment against the dissolved corporation itself.

Dissolution, as the death of an individual, terminates all corporate powers and functions.

In *MacRae v. Kansas Piano Co.*, 69 Kan. 457, 77 Pac. 94, it is said:

> "At the common law this termination of corporate powers became so radical that a corporate debtor was entirely discharged of its obligation, and all actions by or against it were at once and forever abated; not even an execution on a judgment theretofore obtained could issue."

In *First National Bank of Selma v. Colby*, 21 Wall. 609; 22 L. Ed. 687, this Court held that judgment could no more be rendered against a dissolved corporation than against a man dying pendente lite. The court says:

> "With the forfeiture of its rights, privileges and franchises the corporation was necessarily dissolved, as the decree adjudged. Its existence as a legal entity was thereupon ended; it was then a defunct institution, and judgment could no more be rendered against it *in a suit previously commenced* (our italics) "than judgment could be rendered against a dead man dying pendente lite. This is the rule with respect to all corporations whose chartered existence has come to an end, either by lapse of time or decree of forfeiture, unless, by statute, pending suits be allowed to proceed to judgment notwithstanding such dissolution. The prolongation of the corporate life for this specific purpose

as much requires special legislative enactment as does the original creation of the corporation."

To the same effect see *Combes v. Milwaukee & M. R. Co.*, 89 Wis. 297, 62 N. W. 89, 27 L. R. A. 369.

*Mumma v. Potomac Co.*, 8 Pet. 284, 8 L. Ed. 945, was a case where a judgment was entered against defendant corporation in June, 1818. No further proceedings were had until April, 1828, when a scire facias was issued to revive the judgment. Meantime the corporation had been finally dissolved. This Court, speaking through Mr. Justice Story, says:

"A corporation, by the very terms and nature of its political existence, is subject to a dissolution by a surrender of its corporate franchises, and by a forfeiture of them for wilful misuser and nonuser. Every creditor must be presumed to understand the nature and incidents of such a body politic, and to contract with reference to them. And it would be a doctrine new in the law that the existence of a private contract of the corporation should force upon it a perpetuity of existence contrary to public policy, and the nature and objects of its charter."

"There is no pretense to say that a scire facias can be maintained and a judgment had thereon against a dead corporation any more than against a dead man."

In *Marion Phosphate Co. v. Perry* (C. C. A. 5), 74 Fed. 425, the Court says:

"That a dissolution of a corporation abates all suits against it is familiar law of the text-books. Mor. Priv. Corp., Sec. 1031, thus declares: 'The dissolution of a corporation, at common law, not only means that the company has lost its franchises, and can no longer act in a corporate capacity, but it implies that the corporation has wholly ceased to exist in legal contemplation, and will not be recognized as a corporate body for any purpose. It follows that suits brought by or against a corporation are abated by its dissolution, and a judgment purporting to be rendered against a corporation which is not in existence is a nullity.' Any number of cases can be cited to support the text." (citing cases)

In *Venable v. Granite Co.*, 135 Ga. 508, 69 S. E. 822; 32 L. R. A. ns 446, the Supreme Court of Georgia says:

> "A corporation is an artificial person, created by law for specific purposes, the limit of whose existence, powers, and liberties is fixed by its charter. * * * When a corporation expires by limitation of time, it can no longer prosecute or defend an action, in the absence of some saving provision *in its governing statute.*" (our italics)

In *Oklahoma Natural Gas Co. v. Oklahoma*, 273 U. S. 257, 71 L. Ed. 634, this Court, speaking through Mr. Chief Justice Taft, said:

> "It follows, therefore, that as the death of the natural person abates all pending litigation to which such a person is a party, dissolution of a corporation at common law abates all litigation in which the corporation is appearing either as plaintiff or defendant. To allow actions to continue would be to continue the existence of the corporation pro hac vice."

*Pendleton v. Russell*, 144 U. S. 640, 36 L. Ed. 574, is very much in point. Suit was brought in Tennessee against a New York insurance company and transferred to the United States Circuit Court and judgment for plaintiff rendered.

On writ of error to this Court the Circuit Court was reversed. While the cause was pending in this Court the corporation was dissolved in New York at the suit of the Attorney General. Thereafter the Circuit Court entered judgment by default against the insurance company. This judgment was filed as a claim in New York against the receiver, and judgment was finally entered in the Supreme Court of New York disallowing the claim. The cause was then brought to this Court on writ of error.

Speaking through Mr. Justice Field, this Court said:

> "The judgment was therefore no more valid against a non-existing corporation than it would have been if rendered for a like amount against a dead man. The receiver was not substituted in the place of the dissolved corporation; no process or citation was issued by that Court to bring him

before it, or any proceeding taken for that purpose. Nor would such a proceeding have had any effect, for, the corporation having expired, the suit itself had abated. It ceased to be a pending suit."

"In the condition in which the case in the Circuit Court of the United States was left after the reversal of its judgment, it had no jurisdiction to proceed with the action beyond entering the order under the mandate of this Court. The subsequent trial and judgment were but proceedings against a corporation which had no existence, and vitality could not be given by them to the artificial body which had become extinct."

Under any other doctrine the existence of a private contract might force perpetuity of existence on a corporation contrary to public policy and contrary to the nature and objects of its charter. To allow actions to continue against a corporation finally dissolved would be to continue the existence of the corporation pro hac vice.

## V.

**The Iowa statutes and decrees finally dissolving the Iowa corporation and vesting title in the liquidator are entitled to full faith and credit in Montana under Section 1, Article IV, of the Constitution of the United States.**

In resistance to our petition for writ of certiorari counsel for respondents argues that the Supreme Court of Montana bases its decisions upon the interpretation of a Montana statute, and as we have not attacked the validity of the statute, as repugnant to the Federal Constitution we present nothing for review in this Court.

Denial of full faith and credit by virtue of a statutory or constitutional provision offends against Section 1, Article IV, of the Federal Constitution, as would a denial on any other ground.

This Court has so held in *Roche v. McDonald*, 275 U. S. 449, 72 L. Ed: 365, wherein reference is made to the requirement that a state court judgment must in other courts be given the same credit, validity and effect it has in the state where rendered, and wherein it is stated:

"* * * This rule is applicable where a judgment in one state is based upon a cause of action which arose in the state in which it is sought to be enforced, as well as in other cases; and the judgment, if valid where rendered, must be enforced in such other state, *although repugnant to its own statutes.*" (our italics)

The Massachusetts court in *Cogliano v. Ferguson*, 245 Mass. 364, 139 N. E. 527, held that a New York decree dissolving a New York corporation and vesting the New York Superintendent with title to the assets was entitled to full faith and credit in Massachusetts.

In *Morgan v. New York Nat. Bldg. & Loan Assn.*, 73 Conn. 151, 46 Atl. 877, the Connecticut court dissolved an attachment levied on the property of a New York corporation which had been dissolved by New York decree. The Connecticut court held the attachment suit could not be prosecuted to judgment, and says:

"The decree of dissolution pronounced by the Supreme Court of New York was unqualified. It is entitled, under the laws of the United States, to the same effect here which it has there; and it is settled by judicial decision in New York that its statute as to continuances does not, in the absence of any order of court, avail to prolong the existence of the corporation."

As in New York it is settled in Iowa by judicial decision that corporations dissolved by court decree do not survive the decree for any purpose. (See brief point II.)

In *Converse v. Hamilton*, 224 U. S. 243, 56 L. Ed. 749, this Court held that a Minnesota receiver could sue in Wisconsin as a matter of right and not merely by comity, and stated:

"In these circumstances we think the conclusion is unavoidable that the laws of Minnesota and the judicial proceedings in that state, upon which the receiver's title, authority, and right to relief were grounded, and by which the stockholders were bound, were not accorded that faith and credit to which they were entitled under the Constitution and laws of the United States."

In *Hancock Nat. Bank v. Farnum*, 176 U. S. 640, 44 L. Ed. 619, this Court set at rest the proposition that a foreign judgment must be enforced even though contrary to the law of the forum. Under Kansas law one who held judgment against a corporation was permitted to recover against the stockholders. One who recovered such a judgment in Kansas sued a stockholder in Rhode Island, where the Rhode Island court dismissed the action because the Rhode Island law gave no such right to a corporate creditor.

This Court held that full faith and credit had not been given to the Kansas judgment, saying:

> "The question to be determined in this case was not what credit and effect are given in an action against a stockholder in the courts of Rhode Island to a judgment in those courts against the corporation of which he is a stockholder, but what credit and effect are given in the courts of Kansas in a like action to a similar judgment there rendered. Thus and thus only can the full faith and credit prescribed by the Constitution of the United States and the Act of Congress be secured."

So in the case at bar the problem is to determine what effect a quo warranto decree dissolving a corporation has in Iowa, and to give that decree that same effect in Montana. For its effect in Iowa see brief points II and VI.

## VI.

**The Iowa decree of September 25, 1931, effected a present dissolution of Federal Surety Company. If not, the decree of December 22, 1931, certainly did so.**

For Iowa decree of September 25, 1931, see Record, p. 21.

For Iowa Decree of December 22, 1931, see Record, p. 26.

The Iowa decree of September 25, 1931, provides:

> "The Court further finds that the assets of the said defendant are in such shape that said Company is unable to meet its current losses and obligations, and that there is grave danger of the loss and dissipation of said assets, and

that the interest of the public requires that said defendant, Federal Surety Company, be dissolved, its effects distributed, and that a receiver be appointed to take charge of and wind up its affairs."

"Wherefore, it is finally ordered, adjudged and decreed:

"(1) That under and in accordance with the provisions of Section 8964 of the Code of 1927 of the State of Iowa the defendant, Federal Surety Company, shall be dissolved and its effects distributed." (R. 22)

Section 8964 of the Code of 1927 (and also of the Code of 1931) among other things provides (appendix hereto, R. 4):

"The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company and a distribution of its effects, and appoint a receiver therefor."

Respondents urge that the language of the decree did not effect a present dissolution but only provided for dissolution at some future indefinite time.

However, Provision (16) of that Iowa decree (R. 26) reads:

"Said Receiver or any other party in interest is hereby given leave to apply to the Court at any time for any other or further directions, orders or decrees as may be necessary or proper, and the Court retains jurisdiction of this cause for this purpose."

Jurisdiction being so expressly retained, the Iowa court on December 22, 1931, entered a further order and decree (R. 30):

"That the defendant, Federal Surety Company, is, and since September 25, 1931, has been dissolved, and that its corporate existence is terminated, with the results hereinbefore determined."

Respondents' judgment against Federal Surety Company was not rendered in Montana until long after the entry of both decrees in Iowa (R. 61, 62).

But the decree of September 25, 1931, did effect a present dissolution.

The provision of this decree was not merely that Federal Surety Company shall be dissolved, but that it shall be dissolved "in accordance with the provisions of Section 8964 of the Code," etc.

The use of the words "shall be dissolved" in the decree is coupled with qualifying words and circumstances which demonstrate clearly that the word "shall" is not used for the purpose of implying futurity only. The use of the word "shall" is coupled with Code Section 8964 (appendix hereto) which requires immediate dissolution.

In 57 C. J. 545, Sec. 2, it is stated:

> "Sometimes the word 'shall' expresses futurity only; and implies no idea of obligation; and in its common and ordinary usage, *unless accompanied by qualifying words*" (our italics) "which show a contrary intent, it is said that it 'always', or 'commonly', or 'usually', refers to the future, and hence is used in the sense of 'will'; but it may be used in a general sense including both past and future, or as indicative of past, present, or future operation, and should be so considered when a more restricted interpretation is not required; and it may be used in the preterit present sense of 'must'."

Referring to the notations we find Note 80, p. 546, as follows:

> "Although the words 'shall be ratified and confirmed' are properly the words of contract, stipulating for some future legislative act; they are not necessarily so. They may import that they 'shall be ratified and confirmed' by the force of the instrument itself." *U. S. v. Percheman*, 7 Pet. 51, 8 L. Ed. 604, quoting *Viterbo v. Friedlander*, 120 U. S. 707, 30 L. Ed. 776, and citing *U. S. v. Wiggins*, 14 Pet. 334, 349; 10 L. Ed. 481 (where it was said the words "should be construed to mean 'are' ratified and confirmed, in the present tense").

The cases cited are all to the effect that the word "shall" or the word "should" is the equivalent of the word "are" when to give it any other interpretation would do violence to the obvious purpose or intention to be implied from the entire instrument.

And see *Rutherford v. Greene's Heirs*, 15 U. S. 196, 4 L. Ed. 218, where it was held in an opinion by Chief Justice Marshall that the words "25,000 acres of land shall be allotted for, and given to, Major General Nathaniel Greene, his heirs and assigns," passed title to said land, it remained only that the land be allotted by persons designated to allot lands to officers and soldiers.

We have then this situation:

The statute required the dissolution by the original decree upon a finding "that the interest of the public requires it."

The Court found "that the interest of the public requires that the said defendant, Federal Surety Company, be dissolved."

The court then decreed that the corporation shall be dissolved under and in accordance with the provisions of the statute.

The intention of the court to effect a present dissolution clearly appears.

The language used is fairly suscepible of a construction that will carry out this intention and the mandate of the statute, and is not fairly susceptible of any other construction.

## VII.

**Petitioner, the Insurance Commissioner of Iowa, took and holds title to the corporate property by virtue of the Iowa statutes which are part of the corporate charter, and not in invitum by the Court's decree. The decree simply put the statutes into operation.**

In its opinion (R. 79) the Supreme Court of Montana holds that:

"Even though it be conceded that the appointment of the receiver in the State of Iowa operated to transfer the prop-

erty of the defunct surety company to him, such involuntary assignment in aid of a statutory judicial proceeding will not be recognized outside of the jurisdiction of the appointment, where the rights of domestic creditors are involved, if the receiver has not obtained possession of the property and where the creditors have obtained rights or liens upon the property even after the appointment in the foreign jurisdiction."

That holding is an attempt to apply a rule which might be applicable to an appointment based solely on an Iowa decree but disregards the provision of the corporate charter that upon insolvency its property shall pass to a liquidating officer.

In *Relfe v. Rundle*, 103 U. S. 222, 26 L. Ed. 337, this Court, speaking through Mr. Chief Justice Waite, said:

"By the charter of this corporation, if a dissolution was decreed, its property passed by operation of law to the Superintendent of the Insurance Department of the State, and he was charged with the duty of winding up its affairs. Every policyholder and creditor in Louisiana is charged with notice of this charter right which all interested in the affairs of the corporation can insist shall be regarded. The appellees, when they contracted with the Missouri corporation, impliedly agreed that if the corporation was dissolved under the Missouri laws, the Superintendent of the Insurance Department of the State should represent the company in all suits instituted by them affecting the winding up of its affairs."

In *Kinsler v. Casualty Co. of America*, 103 Neb. 382, 172 N. W. 33, this very question is considered, and it was held that a Nebraska creditor could not attach property of a dissolved New York corporation in Nebraska. It would unduly extend this argument to quote all the salient language of this opinion. Complete understanding requires consideration of the full opinion. However, the Nebraska court in part says:

"The intervener then is here by statutory authority to wind up the affairs of this corporation, and this is the purpose for which the title to the property of the appellee insurance company is taken over, and it is all done for the benefit of creditors. Nebraska recognized this right when it

issued a license for this company to do business in this state, and there is nothing to prevent the enforcement of this condition in the state of Nebraska. It follows that every condition and every restriction of the State of New York which gave the power of existence to the appellee herein is now taken over and must be respected and followed by this state. The state of Nebraska, when it issued the license to appellee herein, was charged with notice of the terms and conditions and the basis of authority upon which appellee did business, and thus (those) entering into contract, and performing service for the appellee was charged also with notice that these contracts and all business done with the company were subject to the fundamental law of its existence, and this charter provision, and it was a condition precedent to its entering business in the state of Nebraska that it was based on Section 63 of the New York statute, and this charter went with the company wherever it went and into whatever state it obtained license to do business, and notified the respective state in which it was doing business that the insurance commissioner, if the company should become insolvent, or neglected to pay its debts, that all of the property, assets, and credits, and title of every character, should be taken over and become the absolute property of the insurance commissioner of New York. This property and these rights are subject to every provision of its charter right."

"When the appellee obtained license and entered into contract with this state to do business herein, it expressly reserved the right to have its affairs and all property interests adjudicated with reference to the insurance commissioner of New York."

"If Nebraska did not want to recognize this right, or this condition upon which appellee entered into business in this state, it should have withheld the license."

In *Martyne v. Am. Union F. Ins. Co.*, 216 N. Y. 183, 110 N. E. 502, a creditor attached in New York property of a dissolved Pennsylvania insurance corporation. The Court held the property not subject to attachment, saying:

"The statutes of Pennsylvania immediately affecting the existence of the corporation are binding upon creditors in New York. *Ellsworth v. St. Louis, A. & T. H. R. R. Co.*,

98 N. Y. 553; *Relfe v. Rundle*, supra; *Matter of Stewart*, 39 Misc. Rep. 275, 79 N. Y. Supp. 525. Every person dealing with the defendant corporation did so with knowledge of its charter and its charter rights. In case of insolvency it was at all times subject to dissolution, and in such case title to its property by virtue of the statute became vested in the insurance commissioner."

## VIII.

**Under the Iowa statutes title to the corporate property is vested in the Iowa Commissioner of Insurance, by operation of law, though there are no express words of transfer in the statutes, otherwise it must escheat to the state.**

The power of a corporation to hold property is derived solely from the state creating it.

When the creating state withdraws this power, it ends.

Where then, after dissolution, is the title to property held by the corporation prior to its dissolution?

There is no such thing known to the law as title in abeyance.

If there is no other owner, the property escheats to the state.

This is elementary. However, the rule is stated in 10 R. C. L., p. 605, Sec. 4. After stating the English rule, the text proceeds:

> "In the United States, however, since there is no feudal tenure, the escheat of both real and personal property appears to rest upon the broad principle that when property has ceased to have an owner it should be held for the benefit of the whole community. * * * Where there is an escheat of personal property, the crown takes not by succession, but by right of law, because the property has no other owner."

Federal Surety Company having been dissolved, its property would be diverted from creditors and stockholders for the benefit of the general public, unless title thereto vested in the Commissioner. Unless title so vested in the Commissioner, he would be prevented from executing the trust imposed on him by the Iowa statute.

This result is avoided by a well-settled rule of equity: That where no estate is given to a trustee in words, but under the terms of the trust he is required to deal with the property, he takes, by operation of law, such estate as will enable him to carry out the terms of his trust.

*1 Perry on Trusts* (6th Ed.), Secs. 313, 314, 315.

This Court has in effect recognized this principle in

*Bernheimer v. Converse*, 206 U. S. 516, 525, 534; 51 L. Ed. 1164, 1172, 1176; and in

*Converse v. Hamilton*, 224 U. S. 245, 255, 257; 56 L. Ed. 749.

Both these cases were brought by the receiver of a Minnesota corporation, in other states, to enforce a stockholder's liability provided by the Minnesota statutes. The corporation was not dissolved. The statutes made it the duty of the receiver to enforce the stockholder's liability but contained no words transferring any title to him. This Court, after distinguishing the case of *Booth v. Clark*, 17 How. 322, and other cases dealing with chancery receivers, held that the Minnesota statute had conferred the cause of action on the receiver as a quasi assignee, invested with the creditors' rights and entitled to enforce them in any court of competent jurisdiction in Minnesota or elsewhere. To the same effect is *Converse v. Mears*, 162 Fed. 767.

In *Parker v. Stoughton Mills Co.*, 91 Wis. 174, 64 N. W. 751, the Wisconsin court says:

> "So far as there can be any ownership of such property under such circumstances, it must be in the receiver. The corporation will never rise to claim it. It is not the property of the court, and hence, whatever substantial property there is in anyone, must be in the receiver, charged, of course, with his duties in relation to it."

In *Howarth v. Lombard*, 175 Mass. 570, 56 N. E. 888; 49 L. R. A. 301, the Massachusetts court held that a bank receiver appointed in the State of Washington held *legal title* to a

statutory stockholder's liability as trustee for creditors even though the Washington statute did not so specify.

In *Bullock v. Oliver*, 155 Ga. 151, 116 S. E. 293, Bullock, receiver of an insolvent Florida bank, under a statute which contained no words of transfer of title, sued in Georgia for a statutory stockholder's liability. The Georgia court referred to the distinction between a chancery receiver and a statutory receiver, referred further to the well-established rule that the latter could sue as a matter of right if vested by statute with title, and then holds that a receiver may likewise sue where by *necessary implication* he is vested with title.

These cases are all applications of the rule laid down in *Perry on Trusts* and apply to the case at bar.

## IX.

**It was not necessary for petitioner to plead that time for appeal from the Iowa decree had expired.**

**(a) The Iowa decree of December 22, 1931, finds that Federal Surety Company was by the decree of September 25, 1931, "put, without exception or notice of appeal, beyond all further corporate activity" (R. 29).**

This needs no elaboration further than to point out that this language can only mean that Federal Surety Company has preserved no exception and served no notice of appeal. It should settle the question whether an appeal was or could be taken.

**(b) In pleading a foreign judgment it is not necessary to allege that there is no appeal pending or that the time for appeal has expired. These are matters of defense according to all the authorities.**

It appears from the record and the opinion of the Montana Supreme Court that this question was never raised in the state court and that respondents raise it here for the first time. It should not be considered here.

In *A. Coolot Co. v. Kahner* (C. C. A. 9), 140 Fed. 836, the Court says:

However, the rule is as stated in the brief point.

"If the action was brought in California, before the time allowed by the statute of New York for the plaintiff in error to appeal, it would have been a matter of defense in the present action, and could have been set up in the answer, and if true, could have been shown by it; but no evidence of this kind is shown by the record to have been introduced at the trial. It was not necessary for defendant in error to allege that no appeal had ever been taken, nor that the time to take an appeal had expired."

In *Dow v. Blake*, 148 Ill. 76, 35 N. E. 761, a suit on a Wisconsin judgment brought in Illinois, the Supreme Court of Illinois says:

"Unless it appear that the appeal or writ of error suspends the judgment in the state where it was rendered, its pendency is no bar to an action in another state on the judgment (citing authorities). It is not, therefore, necessary to declare upon the foreign judgment as disposed of by the appellate court, but only as rendered by the inferior court, especially where, as in the case here, the judgment of the inferior court does not show upon its face that an appeal from it has been taken. The pendency of an appeal which operates as a stay is a matter to be proved as a defense to, or in suspension of, the action."

In *Birney v. Birney*, 111 N. J. Eq. 37, 161 Atl. 50, the syllabus by the court, in full, is:

"1. It is no bar to an action upon a foreign judgment that the judgment has been removed by writ of error to a superior court, unless it appears that the appeal suspended the judgment in the state where it was rendered.

"2. The suspension of the judgment by appeal must be pleaded by alleging the facts that effected the suspension."

In *Taylor v. Shew*, 39 Cal. 536, an action on a New York judgment, it was held that to constitute a valid defense to such an action it must be shown affirmatively that an appeal had been taken which had the effect to suspend the judgment appealed from.

In *Fredericks v. Clark*, 3 Mont. 258, the Montana Supreme Court held that if an appeal is in the nature of a writ of error, conferring power on the appellate court only to reverse, modify or affirm the judgment of the inferior court and to "remit the case back to the tribunal whence it came, that such tribunal may conform its judgment and proceedings to the views of its superior, then the judgment appealed from does not, until vacated or reversed, cease to operate as a merger or bar. *Freeman on Judgments*, Sec. 328, and cases cited."

## X.

**The order to show cause why "its business should not be forthwith dissolved," served on Federal Surety Company, gave the Iowa Court jurisdiction to enter a decree of dissolution because the Iowa statute, which was part of its charter, so provides.**

Respondents, in the state court and in this court, challenge the jurisdiction of the District Court of Iowa, in and for Scott County, to enter a decree of dissolution because the notice to show cause which brought the defendant into court ordered it to show cause why "its business should not be forthwith dissolved."

Sec. 8964, Iowa Codes 1927 and 1931, being Sec. 1731, Iowa Code 1897, (Appendix hereto, and R. 4), provides:

> "or he shall communicate the fact to the attorney general, who shall apply to the district court, or if in vacation to one of the judges thereof, for an order requiring the company to show cause why *its business shall not be dissolved.*" (our italics) "The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction" (insolvency-public interest) "he shall decree a dissolution of the company."

The notice to show cause served on Federal Surety Company followed the statute (R. 17).

That the state creating a corporation can provide for its dissolution and has power to provide the form of notice by

which it may be brought before the court for the purpose of dissolution is not open to question.

We know of but one case covering this proposition.

In *Bource v. Trust Francais etc. Co.*, 74 Del. Ch. 332; 127 Atl. 86, the Court says:

> "Nor do we doubt that a state, on creating corporations or other institutions for pecuniary or charitable purposes, may provide a mode in which their conduct may be investigated, their obligations enforced, or their charters revoked, which shall require other than personal service upon their officers or members. Parties becoming members of such corporations or institutions would hold their interest subject to the conditions prescribed by law."

The language so used by the Delaware court was taken verbatim from a decision of this Court in *Pennoyer v. Neff*, 95 U. S. 714, 24 L. Ed. 565.

But, after all, the principle is elementary.

## XI.

**The questions for review by this Court were properly preserved in the Montana courts.**

**(a) Petitioner set up the title, right, privilege or immunity claimed by him under the constitution.**

**(b) The effect of the decrees and statutes of Iowa was pleaded and proved.**

**(c) The entry of the orders and decrees in Iowa was properly pleaded.**

John Mieyr filed his complaint, pleading a claim against Federal Surety Company for damages (R. 2);

Pleading the Iowa statutes governing dissolution of corporations (R. 3, par. 5);

Pleading the Iowa decree of September 25, 1931, dissolving Federal Surety Company and appointing E. W. Clark (your petitioner) as receiver and liquidating officer (R. 5, par. 6);

Pleading that by that decree Federal Surety Company has

ceased to exist as a corporate entity and its successor, E. W. Clark, Receiver, is beyond the jurisdiction of this Court (R. 6, par. 10); and

Asking for judgment and the appointment of a receiver in Montana (R. 7).

A receiver was appointed ex parte (R. 8).

Respondents then petitioned for leave to levy execution (R. 11), which petition was granted (R. 14) on certain conditions (R. 12 and 13).

The receiver then moved to set aside the order permitting execution (R. 14).

E. W. Clark (your petitioner) then filed an answer and cross-petition (R. 15);

Admitting (among other things) the allegations of Paragraphs 5 and 6 of complaint (R. 16, Par. 3, Par. 5);

Attaching exemplified copies of the decrees of September 25, 1931, and December 22, 1931, of the Iowa court and letters of receivership to him as Exhibits "A," "B," and "C" (R. 18, 21, 26, 31);

Setting out in full the Iowa statutes (R. 18, 19); and

Praying the confirmation of Crichton as an ancillary receiver (R. 21) and for specific orders as to the rights and duties of such ancillary receiver.

Complainant then admitted the allegations of the answer and cross-petition (R. 34);

And on the pleadings as they then stood the Cascade County court entered its order and decree (R. 34) confirming the appointment of Crichton as ancillary receiver and revoking its leave to respondents to levy execution (R. 39).

Respondents then filed their motion to vacate this order and decree (R. 39) and in the alternative to modify the decree (R. 40).

E. W. Clark (your petitioner) then filed a resistance to this motion (R. 64) setting up that to sustain such motion "would, in violation of Section 1, Article IV of the Constitution of the United States, deny full faith and credit to the

public acts, records and judicial proceedings of the State of Iowa, made and entered in the District Court of the State of Iowa, in and for Scott County, a court of general jurisdiction, in the case entitled State of Iowa, ex rel. John Fletcher, Plaintiff, vs. Federal Surety Company of Davenport, Iowa, Defendant, being cause No. 28238 in equity, in which cause said Federal Surety Company by decrees of said court, duly made and entered on September 25th, 1931, and December 22nd, 1931, was dissolved and E. W. Clark, Commissioner of Insurance of the State of Iowa, was then duly appointed statutory receiver and/or liquidating officer of said Federal Surety Company, and vesting in him title to all property of said Federal Surety Company wherever situated, all of which is more fully shown" in the duly exemplified copies of the decrees attached as exhibits, etc.

Respondents' appeal was from an order overruling their motion to vacate or modify the decree.

Now the statutes, orders and decrees relied upon by petitioner and their effect in Iowa to finally dissolve the corporation and vest title to its assets in your petitioner was all pleaded as set out in our statement of the case and in this division of our argument.

These allegations were not controverted. The facts pleaded were not denied. No issue respecting them was joined. The allegations of the complaint and of the answer and cross-petition were therefore established without proof.

**(b) The effect of the decrees and statutes of Iowa was pleaded and proved.**

After petitioner's resistance to respondents' motion was filed, it was stipulated that the statutes and decrees pleaded are correctly set out, etc. (R. 65).

The effect of these statutes and decrees was proven by the findings and orders of the decree of December 22, 1931 (R. 29, 30).

**(c) The entry of the orders and decrees in Iowa was properly pleaded.**

In their brief in resistance to our petition for certiorari, on Page 11, respondents insist that it was not alleged that the

Iowa judgments were "duly given and made" as required by the Montana statute.

This allegation appears repeatedly (R. p. 5, Par. 6, and R. pp. 64. 65).

Moreover, respondents raised no such question in the Montana courts and cannot raise it here for the first time.

## XII.

**The title which enables a liquidator to sue for property in another state necessarily precludes any other from suing for it. The charter provisions, in the form of statutes providing for dissolution and liquidation, are implied terms of every contract which the corporation makes with its creditors. This precludes the creditor from in any manner interfering with the liquidator's control of the corporate property wherever situated.**

We think it follows from the principles heretofore discussed that, where the statutes of the domiciliary state of a corporation provide for its dissolution and the liquidation of its assets by a state officer, this liquidator has the sole right to the corporate property, in trust, of course, for creditors and stockholders, wherever situated, and that such is the effect of a decree of dissolution in the domiciliary state, which other states are bound to recognize.

The rule that a state has exclusive jurisdiction over all property within its borders is subject to the constitutional provision that it must give full faith and credit to the public acts, records and judicial proceedings of every other state.

This was directly held by this Court in *Roche v. McDonald*, 275 U. S. 449, discussed under brief point V, and holding that a judgment, if valid where rendered, must be enforced in another state although repugnant to its own statutes.

If the liquidator appointed under such statutes takes title to all corporate property, in trust, then this title must be recognized everywhere and excludes any conflicting rights to such corporate property.

It follows that creditors cannot subject the corporate property to their debts, even though it be situated in another state,

and that all creditors are cestuis que trustent and this is their sole right in the corporate property.

They cannot repudiate the trust. They agreed to it when they contracted with the corporation.

In *Relfe v. Rundle*, 103 U. S. 222, 26 L. Ed. 337, this Court held:

> "By the charter of this corporation, if a dissolution was decreed, its property passed by operation of law to the Superintendent of the Insurance Department of the state and he was charged with the duty of winding up its affairs. Every policyholder and creditor in Louisiana is charged with notice of this charter right."

In *Cogliano v. Ferguson*, 245 Mass. 364, 139 N. E. 527, the Court said:

> "The contract having been made with a foreign corporation, among its implied terms were the provisions of the statute under which it was organized and could be dissolved and its assets distributed among creditors."

In *Mumma v. Potomac Co.*, 8 Peters 284, 8 L. Ed. 945, this Court said:

> "A corporation, by the very terms and nature of its political existence is subject to a dissolution by a surrender of its corporate franchises and by a forfeiture of them for wilful misuser and nonuser. Every creditor must be presumed to understand the nature and incidents of such a body politic and to contract with reference to them."

## CONCLUSION

Federal Surety Company existed only by virtue of Iowa statutes, among which were those limiting such existence. That is, Iowa gave it a limited life. When such limitation took effect it was as though its life had never been.

Iowa could refuse to give it life at all. Or it could give it a limited life, which it did. When that limited span ended, it was dead everywhere. The laws of Iowa never created more

than that limited span, and when that span ended the creation ended.

In creating this limited existence it was incumbent upon the State of Iowa to provide for the liquidation of such property as it might leave behind it, and this it did, providing in effect that such property should be applied:

First: To its creditors, pro rata;

Second: To its stockholders, if creditors did not exhaust it;

Third: The corporate property should go to one of the state officers in trust for these purposes.

At common law the corporation's real estate reverted to its grantors.

Its personal property went to the crown.

There was no legal obligation on the State of Iowa to relax these rules at all. It saw fit to relax them to the extent above stated. It had the legal right to do this, and all states must recognize it.

It follows that no judgment could be entered against it and that no execution or attachment could issue, at the instance of its creditors, against the property held in trust for all the creditors.

These were the effects of the Iowa statutes and decrees, and these effects the Supreme Court of Montana refused to recognize.

Our contentions are founded not only on precedent but upon the necessities and exigencies of business as transacted in the United States.

The constant tendency has been toward the interstate transaction of business in corporate form. Our railroads, insurance companies, manufacturers, and distributors are no longer wholly localized. The activities of many extend beyond the state of domicile and in many instances extend throughout the forty-eight states.

The doctrine of the Montana court would provoke retaliatory legislation which, if permitted to govern, will not only hamper our commerce but will render impracticable attempts

to liquidate affairs of an insolvent concern which has transacted business in the several states.

Upon insolvency of such a corporation, all equitable principles call for a distribution of its unencumbered assets ratably to unsecured creditors irrespective of residence or of geographical location of assets. When the state of domicile provides for such ratable distribution, that purpose should be carried out, and all reasonable implications and interpretations essential to that end should be made.

The iniquity of the Montana decision is the more glaring because that opinion first denies any remedy by way of ancillary proceedings and then proceeds to hold that its citizens have their remedy by way of attachment and execution irrespective of the rights of creditors resident elsewhere.

While technically the citizens of other states might similarly avail themselves of those remedies in Montana, nevertheless as a practical matter the advantage is with the Montana residents. The Montana Supreme Court evidently recognized that it could not segregate the Montana assets for its own citizens by any formal proceeding without offending the equal rights clause of the Constitution. Its decision goes to the same end, however, because that decision refuses to permit any obstruction to the right of attachment and levy of execution and encourages its citizens in the use of those remedies.

If that doctrine is permitted to govern, the state of domicile of a corporation will be powerless to provide for ratable distribution. Inasmuch as an insurance corporation cannot be adjudicated a bankrupt under the Federal bankruptcy act, the ratable distribution of assets of an insolvent insurance corporation under the Montana doctrine would be impossible, and the door would be open to all of the well-known abuses which were so prevalent in this country with respect to commercial corporations prior to the adoption of the present bankruptcy act.

The record is conclusively for petitioner with but two possible exceptions, viz.:

1. Use of the words "shall be dissolved in accordance * * " in the Iowa decree, and

2. The omission from the Iowa statute of words *expressly* transferring title to the Iowa Commissioner.

To accord the present tense to the word "shall" *and its accompanying text* is justified on unquestioned authority, including that of Chief Justice Marshall.

To imply a transfer of title to the Iowa Commissioner essential to carrying out the trust imposed on him by the statute is but the application of an axiom well known to the law of trusts.

Neither is strained. Both are called for by the clear-cut necessity for equitable, ratable, and relatively inexpensive corporate liquidation, which is a benefit that would permanently flow from a reversal in this cause.

It is respectfully submitted that the decision of the Montana Supreme Court should be reversed.

REUEL B. COOK,

EDMOND M. COOK,

M. S. GUNN,

*Counsel for Petitioner.*

# APPENDIX.

## Statutes.

*Judicial Code, Section 237, as Amended by Act of February 13, 1925.*

(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity, or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ.

(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding para-

graph be an obstacle to granting a review on certiorari under this paragraph.

(c) If a writ of error be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the writ of error was allowed shall be regarded and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the court or judge by whom the writ of error was allowed: PROVIDED, That where in such a case there appears to be no reasonable ground for granting a petition for certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs, as provided in section 878 of this title.

*Section* 8402, *Code of Iowa*, 1927 *and* 1931, *Being Also Section* 1640 *of the Code of Iowa*, 1897.

Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the State of Iowa. An action therefor may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them.

*Section* 8964, *Code of Iowa*, 1927 *and* 1931, *Being Also Section* 1731 *of the Code of Iowa*, 1897.

The commissioner of insurance shall, when he finds it expedient, appoint one or more persons, not officers, agents, or stockholders of any insurance company doing business in the state, to examine into the affairs and condition of any such company incorporated or doing business therein, or make such examination himself, and the officers or agents thereof shall produce their books for the inspection of the examiners and otherwise assist therein, so far as they can do so; and in conducting the investigation they may examine under oath the officers or agents of any company, or others, relative to the business and condition of the company, and the result thereof shall be published in one or more papers in the state, when

the commissioner believes the public interest requires it. When it appears to the commissioner from such examination that the assets and funds of any company incorporated in this state are reduced or impaired by its liabilities, as defined under the head of liabilities in the statement required by this chapter, more than twenty per cent below the paid-up capital stock required, he shall direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney general, who shall apply to the district court, or if in vacation to one of the judges thereof, for an order requiring the company to show cause why its business shall not be dissolved. The court or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it appears to its or his satisfaction that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, it or he shall decree a dissolution of said company and a distribution of its effects, and appoint a receiver therefor. The application of the attorney general may be by the court or judge sent to a referee to inquire into and report upon the facts stated therein, which report shall be made to the court or judge.

*Section 8613-el, Code of Iowa, 1931, Being Chapter 233 of the Acts of the 43rd General Assembly of Iowa.*

The commissioner of insurance henceforth shall be the receiver and or liquidating officer for any insurance company, association or insurance carrier, and shall serve without compensation other than his stated compensation as commissioner of insurance, but he shall be allowed clerical and other expenses necessary for the conduct of such receivership.